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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20–24 November 2017

Opinion No. 93/2017 concerning Muhammed Al Saqr (Saudi Arabia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed that mandate and most recently extended it for a three-year period in its resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/36/38), on 30 August 2017 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Muhammed Al Saqr. The Government replied to the communication on 23 October 2017. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. Muhammed bin Nasser bin Muhammed Al Saqr is a 24-year-old Saudi citizen working for the Saudi Emergency Force. He usually resides in Dammam in Saudi Arabia.

Arrest and detention

5. The source reports that on 18 July 2015, officers from the Directorate of General Investigation (Al-Mabahith al-Amma) in civilian clothes raided Mr. Al Saqr's house and searched it, without confiscating anything. They then arrested him without any warrant, under the pretext that he had to "sign documents" as a formality, and promised to bring him back within half an hour. Beforehand, they had asked him to take off his uniform and change into civilian clothes.

6. According to the source, Mr. Al Saqr subsequently remained disappeared for more than three months. Indeed, his family repeatedly tried to inquire to the Ministry of the Interior but to no avail. They then filed a complaint with the National Society for Human Rights, after which they received a phone call from Mr. Al Saqr on 29 October 2015 saying that he was being detained in Riyadh. They later found out that after he hung up the phone, he was severely beaten in retaliation for the complaint filed by his family. He was then once again held incommunicado, until May 2016.

7. In March 2016, Mr. Al Saqr's family reportedly managed to meet with the adviser to Prince Mohammed bin Nayef, the former Minister of the Interior of Saudi Arabia. His family was told that the investigation into Mr. Al Saqr's case had "ended in January 2016" and that he was still being held as a disciplinary measure, but would be released "within a couple of weeks". According to the source, Mr. Al Saqr was initially detained at Naif Arab University for Security Sciences, before being transferred to Al-Ha'ir Prison in March 2016.

8. The source reports that on 15 May 2016, after 11 months in detention, Mr. Al Saqr was allowed his first family visit, at Al-Ha'ir Prison. His relatives noticed traces of torture on his face and body. He informed them that he had been tortured at Naif Arab University for Security Sciences by masked men in black clothing who had punched him, kicked him and beaten him with a rod. Mr. Al Saqr was reportedly held in solitary confinement for 11 months, was deprived of sleep for 31 days and was threatened with harm to his family. He was then forced to sign and fingerprint confessions stating that he had "taken part in the Al Abha Mosque bombing" — which took place four months after his arrest — and had "hidden weapons in his home", and "transferred money to his brother", who has been missing since June 2015. Indeed, the source believes that Mr. Al Saqr is being arbitrarily detained because the authorities are in fact looking for his brother.

9. After the visit, Mr. Al Saqr was reportedly transferred from solitary confinement to the general prison population at Al-Ha'ir, for a period of three months. In October 2016, he was reportedly placed in solitary confinement again and underwent another round of investigations, during which he was tortured. On 16 November 2016, he was finally allowed to contact his family to inform them that the next visit would be in January 2017. In February 2017, he was reportedly once more detained incommunicado for a period of two weeks before he was allowed to contact his family again.

10. According to the source, Mr. Al Saqr has not been allowed to appoint or meet with a lawyer, and his family has faced obstacles in seeking legal counsel as attorneys-at-law refuse to take on his case citing the fact that they are afraid to represent Al-Ha'ir Prison detainees who are under the custody of the Directorate of General Investigation.

11. The source also reports that Mr. Al Saqr has to this day not been charged, nor has he been presented to a judicial authority.

Analysis of violations

12. In the light of the above information, the source submits that the detention of Mr. Al Saqr falls under categories I and III of the categories applicable to the cases under consideration by the Working Group.

Category I — absence of legal basis justifying the deprivation of liberty

13. According to the source, the detention of Mr. Al Saqr from its outset to this day lacks a legal basis, as he was arrested without a warrant for or explanation for his arrest, he was detained incommunicado for 11 months, and he has reportedly not been charged with any crime, more than two years after his arrest. The source thus submits that, as such, his detention is in violation of article 9 of the Universal Declaration of Human Rights, falling within category I.

Category III — non-observance of international fair trial norms

Arbitrary arrest and incommunicado detention

14. According to the source, Mr. Al Saqr was arrested without a warrant for his arrest or for the search of his house, and was given false pretences by the arresting officers. His arrest is therefore in violation of principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

15. Furthermore, Mr. Al Saqr was subsequently secretly detained for 3 months and was detained incommunicado for a total of 11 months. The source notes that by placing detainees outside the protection of the law, incommunicado detention is a prima facie form of arbitrary detention and constitutes a violation of article 6 of the Universal Declaration of Human Rights which provides that "everyone has the right to recognition everywhere as a person before the law".

Violation of the right to be promptly brought before a judge

16. The source reports that Mr. Al Saqr has, during a period of more than two years of detention, never been presented to a judge or a judicial authority and has yet to be charged with any crime. The source thus submits that he was denied the right to challenge the legality of his detention, in violation of principle 11 of the Body of Principles.

Torture

17. According to the source, Mr. Al Saqr was subjected to acts of physical torture, such as being repeatedly punched, kicked and beaten with a rod in order to force him to confess, in clear violation of article 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and article 5 of the Universal Declaration of Human Rights.

18. In addition to the physical torture, Mr. Al Saqr was reportedly detained incommunicado and in solitary confinement for the first 11 months of his detention. The source notes that, as has repeatedly been stated by special procedures of the Human Rights Council, prolonged solitary confinement — i.e. in excess of 15 days — constitutes torture. Furthermore, incommunicado detention can itself constitute torture, as per General Assembly resolution 60/148.

Violation of the right to legal counsel

19. The source submits that Mr. Al Saqr was denied access to legal counsel throughout his detention and was interrogated in the absence of a lawyer, in violation of principles 17 and 18 of the Body of Principles.

20. In the light of the above, the source submits that the non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty of Mr. Al Saqr an arbitrary character, falling under category III.

Response from the Government

21. On 30 August 2017, the Working Group transmitted the allegations from the source to the Government through its regular communication procedure. The Working Group requested the Government to provide detailed information by 30 October 2017 about the current situation of Mr. Al Saqr and any comment on the source's allegations.

22. In its response dated 23 October 2017, the Government informs the Working Group that Mr. Al Saqr was arrested on 18 July 2015, following the issuance of an arrest warrant against him pursuant to article 4 of the Penal Law for Crimes of Terrorism and its Financing (Royal Decree No. M/16 of 27 December 2013). He was interrogated by the competent authority and detained on the basis of articles 2 and 5 of the law, and the detention was extended by the competent court on the basis of article 5 of the law for the following charges:

(a) Supporting the terrorist organization Islamic State in Iraq and the Sham (ISIS), meeting with supporters of this organization, covering up their terrorist schemes within Saudi Arabia, and covering for persons wanted for fighting in one of the conflict-afflicted States;

(b) Financing terrorism in one of the conflict-afflicted States in contravention of article 1 (b) of the law;

(c) Committing cybercrime criminalized on the basis of the anti-cybercrime law, including joining an electronic group in a social media program to provide propaganda support to the terrorist organization (ISIS); and

(d) Selling arms and ammunition, which is punishable and punished in accordance with article 34 (b) of the Anti-Cybercrime Law (Royal Decree No. M/17 of 26 March 2007).

23. Concerning the allegation of Mr. Al Saqr's incommunicado detention, the Government claims that article 6 of the Penal Law for Crimes of Terrorism and its Financing authorizes the investigator to prevent the accused from contacting others during the interrogation, and that Mr. Al Saqr's visitation and communication rights have been respected. Article 10 of the said law gives the defendant the right to seek legal representation and Mr. Al Saqr has not been prevented from doing so. He has not been subjected to torture or ill-treatment.

24. The Government also disputes the allegation of detention and torture at Naif Arab University for Security Sciences, which allegedly does not belong to the Government and is a place of academic teaching, not of investigation. Detention or imprisonment is allowed only in designated locations for a period determined by the competent authority in accordance with article 2 of the Criminal Procedure Code.

25. The Government claims that Mr. Al Saqr's house was searched in accordance with article 16 of the Penal Law for Crimes of Terrorism and its Financing, and that all the procedures and guarantees were respected.

26. According to the Government, Mr. Al Saqr was not forced to sign confessions in relation to his involvement in the Al Abha Mosque bombing, since he has not been charged with that crime.

27. The Government also denies that Mr. Al Saqr has been detained in order to go after his brother, since his brother is in one of the conflict-afflicted States to take part in combat. Mr. Al Saqr has been detained for the previously mentioned crimes.

28. Lastly, the Government notes that it faithfully observes international human rights standards.

Further comments from the source

29. The response from the Government was transmitted to the source for its further comments, on 25 October 2017. In its response, of 7 November 2017, the source welcomes the Government's response but stresses that most of the information provided either fails to

address the allegations raised or denies them outright without providing compelling evidence.

30. As to the Government's claims that Mr. Al Saqr was arrested pursuant to an arrest warrant issued under article 4 of the Penal Law for Crimes of Terrorism and its Financing, the source explains that article 4 confers the power to issue an arrest warrant for terror-related crimes to the Minister of the Interior or his delegate rather than to a competent judicial authority, and that the law does not refer to the right of a detainee to be presented with such a warrant. The source reaffirms that Mr. Al Saqr was arbitrarily arrested without a warrant and without being informed of the reason for his arrest.

31. The source also points out that the Government failed to specify when Mr. Al Saqr was allowed to communicate with the outside world or receive visits from his family and failed to provide documentary evidence of communications that took place between July 2015 and May 2016. Therefore, the information provided by the Government does not contradict the allegation that Mr. Al Saqr was detained incommunicado for almost 11 months before being able to contact his family.

32. In response to the Government's denial of Mr. Al Saqr's secret detention and torture at Naif Arab University for Security Sciences, citing domestic legal provisions, the source highlights the lack of any documentation to substantiate the Government's claim as well as the Government's failure to indicate the place of detention of Mr. Al Saqr during the relevant period. The source thus reaffirms that Mr. Al Saqr was secretly detained at Naif Arab University for Security Sciences until March 2016, and was placed outside the protection of the law while being interrogated and subjected to abusive treatment.

33. The source regrets the Government's non-response to the allegations concerning the violation of Mr. Al Saqr's right to be promptly brought before a judicial authority and of his right to challenge the legality of his deprivation of liberty under a habeas corpus process.

34. The source also notes that the Government failed to specify whether Mr. Al Saqr had been officially charged, a tacit acknowledgment that he is currently held in detention without knowing the charges against him, in violation of his right to be promptly informed of the charges against him, which deprives his detention of any legal basis.

35. In addition, the source explains that, contrary to the Government's account, article 10 of the Penal Law for Crimes of Terrorism and its Financing gives the security forces wide discretionary powers as regards access to legal counsel, which may be provided "within an adequate period of time to be decided upon by the investigatory body", and that Mr. Al Saqr was never allowed to meet with a lawyer and was interrogated in the absence of his legal representative in violation of his right to legal counsel.

36. Lastly, the source notes that the Government rejected the allegations of torture and forced confessions but failed to provide an independent medical examination or other factual evidence. According to the source, Mr. Al Saqr was subjected to severe acts of torture, including incommunicado detention and solitary confinement for a prolonged period of time, beatings that left signs of physical violence visible on his body at the time of his family's visit, sleep deprivation, and threats of harm to his relatives that amount to torture under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded to by Saudi Arabia in 1997, and represent a serious violation of the right to a fair trial and due process.

Discussion

37. The Working Group thanks the source and the Government for their engagement and for their submissions in relation to the detention of Mr. Al Saqr.

38. The Working Group has, in its jurisprudence, established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

39. The Working Group recalls that where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.[1]

40. At the outset, the Working Group notes with concern that it has heard numerous complaints about prolonged incommunicado detention, as well as torture, for months if not years, of Saudi citizens and foreign nationals by the Directorate of General Investigation, the Ministry of the Interior's domestic intelligence service doubling as a secret police agency, which has been nearly ubiquitous in the cases referred to the Working Group from Saudi Arabia for over two decades, since the first appearance in a decision by the Working Group in its eighth session, in 1993.[2] The Working Group notes that practices of incommunicado detention effectively place the victims outside the protection of the law and deprive them of any legal safeguards.

Category I

41. The Working Group will examine the relevant categories applicable to its consideration of this case, including category I, which concerns deprivation of liberty without invoking any legal basis.

42. According to the information provided by the source, which the Government has failed to rebut with credible evidence, Mr. Al Saqr was arrested without a warrant and was not promptly informed of the reasons for his arrest or of any charges against him.

43. While the Government states that Mr. Al Saqr was arrested on 18 July 2015 in accordance with the law and due process and that he was granted visitation and communication rights, it has failed to specify when Mr. Al Saqr was in fact allowed to communicate with the outside world or receive visits from his family, or to provide documentary evidence such as a copy of the arrest warrant and visitation logs or phone registries to prove communications taking place between July 2015 and May 2016.

44. The Working Group also holds that an arrest warrant, even assuming that it has been issued by the Minister of the Interior or by delegated organs such as the Directorate of General Investigation, under article 4 of the Penal Law for Crimes of Terrorism and its Financing, does not meet the requirement that any form of detention or imprisonment should be ordered by, or be subject to the effective control of, a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles. The Working Group is of the view that the Ministry of the Interior or its delegated organs cannot be considered as a competent authority in this respect. The Working Group underlines that any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial judicial authority is arbitrary and lacks legal basis.

45. The source has also alleged, and the Government has failed to refute with documentary proof, that Mr. Al Saqr was subsequently "disappeared" for more than three months, before he was allowed to make a brief phone call to his family, and that he was

[1] See *Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639, at pp. 660–661, para. 55; and opinions No. 41/2013 (Libya), para. 27, and No. 59/2016 (Maldives), para. 61.

[2] The Working Group found the deprivation of liberty of the person(s) concerned to be arbitrary in its decisions Nos. 60/1993, 19/1995 and 48/1995; and in its opinions Nos. 8/2002, 25/2004, 34/2005, 35/2005, 9/2006, 12/2006, 36/2006, 37/2006, 4/2007, 9/2007, 19/2007, 27/2007, 6/2008, 11/2008, 13/2008, 22/2008, 31/2008, 36/2008, 37/2008, 21/2009, 2/2011, 10/2011, 11/2011, 17/2011, 18/2011, 19/2011, 30/2011, 31/2011, 33/2011, 41/2011, 42/2011, 43/2011, 44/2011, 45/2011, 8/2012, 22/2012, 52/2012, 53/2012, 32/2013, 44/2013, 45/2013, 46/2013, 14/2014, 32/2014, 13/2015, 38/2015, 52/2016, 61/2016 and 10/2017. The Working Group did not find the detention of the person concerned to be arbitrary in opinion No. 44/2006, and it filed the case after the release of the detainee(s) in decision No. 37/1993 and opinions No. 22/2005 and No. 18/2014.

held incommunicado for a period of 11 months by the Directorate of General Investigation at Naif Arab University for Security Sciences and Al-Ha'ir Prison, which placed him outside the protection of the law. Furthermore, the secret and incommunicado detention entailed the denial of Mr. Al Saqr's right to notify and communicate with his family and lawyer in accordance with principles 15, 16, 17, 18 and 19 of the Body of Principles, and his right to be brought promptly before a judge and to be tried within a reasonable time as stipulated in principles 37 and 38 of the Body of Principles. All in all, the source has alleged that his incommunicado detention resulted in the cumulative violation of articles 6, 8, 9, 10 and 12 of the Universal Declaration of Human Rights.

46. The Working Group underlines that the right to liberty and security of the person, enshrined in article 3 of the Universal Declaration of Human Rights, applies to everyone and is further guaranteed through article 9 of Universal Declaration of Human Rights. Article 9, which prohibits arbitrary arrest and detention, is a deeply entrenched human rights norm, reflected in State practice.[3] Prohibition of arbitrary detention is part and parcel of customary law that bears an absolute character and is in fact a peremptory norm (*jus cogens*) of international law and therefore binding upon all States, irrespective of their treaty obligations.[4]

47. In addition, as stated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, deprivation of liberty is regarded as unlawful when it is not on such grounds and in accordance with procedures established by law.[5] In order to ascertain such legal basis, the authorities must present the charges when a person is arrested and detained, which did not happen in the present case.

48. Furthermore, during his secret detention exceeding three months, Mr. Al Saqr was placed outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights. Mr. Al Saqr's incommunicado detention in a secret location also appears to amount to a prima facie enforced disappearance, which has been universally condemned "as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field".[6]

49. The Working Group expresses its serious concern at the secret and incommunicado detention of Mr. Al Saqr. The Working Group, in its practice, has consistently argued that holding a person incommunicado breaches the right to challenge the lawfulness of detention before a judge.[7] Articles 10 and 11 of the Universal Declaration of Human Rights also confirm the impermissibility of incommunicado detention. Furthermore, the Committee against Torture has made it clear that incommunicado detention creates conditions that lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[8] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also consistently urged States to declare incommunicado detention illegal.[9]

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[3] See *Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 663, para. 65, and the separate opinion of Judge Cançado Trindade, pp. 763–777, paras. 107–142. See also Working Group on Arbitrary Detention opinions No. 30/2011, para. 18; No. 31/2011, para. 16; No. 33/2011, para. 16; No. 41/2011, para. 15; No. 42/2011, para. 21; No. 43/2011, para. 16; No. 44/2011, para. 18; No. 45/2011, para. 21; No. 22/2012, para. 44; No. 53/2012, para. 20; and No. 14/2014, para. 18.

[4] See Working Group on Arbitrary Detention deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law (A/HRC/22/44, paras. 37–75), specifically paras. 42–51; A/HRC/30/37, para. 11; and opinions No. 63/2017, para. 51; No. 15/2011, para. 20; and No. 16/2011, para. 12.

[5] See A/HRC/30/37, para. 12.

[6] See General Assembly resolution 47/133.

[7] See, for example, opinions No. 56/2016 and No. 53/2016.

[8] See A/54/44, para. 182 (a).

[9] See A/54/426, para. 42; and A/HRC/13/39/Add.5, para. 156.

50. The Working Group therefore considers that the arrest and prolonged secret and incommunicado detention of Mr. Al Saqr by the Directorate of General Investigation lack a legal basis and are thus arbitrary, falling under category I.[10]

Category III

51. The Working Group will now proceed to consider whether the violations of the right of Mr. Al Saqr to a fair trial and due process were of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III.

52. The source has alleged that Mr. Al Saqr was denied access to legal counsel throughout his detention and that he was interrogated in the absence of a lawyer. The Government has failed to refute these allegations with documentary proof. The Working Group finds that the complete denial of legal assistance to Mr. Al Saqr for the entire duration of his detention since 18 July 2015 constitutes a violation of principles 17 (1) and 18 (1), (2) and (3) of the Body of Principles and of principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. The Working Group expresses its particular concern at article 10 of the Penal Law for Crimes of Terrorism and its Financing, under which access to legal assistance may be granted "within an adequate period of time to be decided upon by the investigatory body".

53. The Working Group notes with serious concern that Mr. Al Saqr was not promptly informed of the nature and cause of the charges against him. He was also not brought promptly before a judge, protected from forced self-incrimination during the interrogations, tried without undue delay within a reasonable time, released pending the trial, or allowed to take proceedings before a court to determine the lawfulness of his detention. The Working Group recalls that these minimum due process and fair trial guarantees are protected under articles 9, 10 and 11 of the Universal Declaration of Human Rights as well as peremptory norms (*jus cogens*) of customary international law.[11]

54. According to the source, Mr. Al Saqr was also subjected to acts of physical torture, such as being repeatedly punched, kicked and beaten with a rod in order to force him to confess. He was reportedly also detained incommunicado and in solitary confinement for the first 11 months of his detention. The Government has rejected these allegations of torture and forced confessions but has failed to provide evidence in the form of an independent medical examination or other factual evidence.

55. The Working Group notes that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has defined solitary confinement in excess of 15 days as "prolonged", at which point some of the harmful psychological effects of isolation can become irreversible.[12] Such prolonged solitary confinement may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture,[13] and prolonged incommunicado detention in a secret place may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[14] The Working Group finds that Mr. Al Saqr's prolonged incommunicado detention in a secret place, as well as the fact that he was held in solitary confinement for extensive periods of time, would appear to qualify as a prima facie violation of the prohibition of torture.

56. The Working Group expresses its grave concern at the allegation that Mr. Al Saqr was deprived of sleep for 31 days, and notes that restriction of sleep is one of the torture methods listed in paragraph 145 of the Manual on the Effective Investigation and

[10] See opinions No. 63/2017, para. 53; No. 21/2017, para. 37; No. 17/2017, para. 37; and No. 39/2016, para. 45.

[11] See also principle 36 (1) of the Body of Principles.

[12] See A/66/268, paras. 26 and 61. See also rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which likewise refer to solitary confinement for a period in excess of 15 consecutive days as prolonged solitary confinement.

[13] See A/63/175, paras. 56 and 77.

[14] See A/56/156, para. 14.

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).[15] In this regard, the Working Group finds that sleep deprivation for 31 days in and of itself would appear to amount to a prima facie violation of the prohibition of torture and inhuman treatment.

57. The Working Group also expresses its grave concern at the threat of physical harm to Mr. Al Saqr's family during his interrogation. It notes that the threat of harm to one's family is one of the torture methods listed in paragraph 145 of the Istanbul Protocol. The Working Group concludes that the threat of harm to the family of Mr. Al Saqr would in and of itself appear to amount to a prima facie violation of the prohibition of torture and inhuman treatment, and also violates articles 12 and 16 of the Universal Declaration of Human Rights.

58. The Working Group reminds the Government of the legal obligations undertaken by it as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which include the duty to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction (art. 12). The Government should also ensure that any individual who alleges that he or she has been subjected to torture has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities (art. 13), that, in its legal system, the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation (art. 14), and that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (art. 15).

59. In the light of the foregoing, the Working Group concludes that the violations of Mr. Al Saqr's fair trial rights are of such gravity as to render his deprivation of liberty arbitrary, falling within category III.

Penal Law for Crimes of Terrorism and its Financing (Royal Decree No. M/16 of 27 December 2013)

60. The Working Group considers that the Penal Law for Crimes of Terrorism and its Financing (Royal Decree No. M/16 of 27 December 2013), especially articles 4, 6 and 16 of that law, require revision in order to comply with international human rights standards. A valid arrest and search warrant must be issued not by the executive branch that carries out the arrest or search but by a competent, independent and impartial judicial authority; and legal assistance must be available at all stages of detention to guarantee the right to liberty and security of person and protection from arbitrary arrest and detention or arbitrary interference with a person's privacy, family, home and correspondence under articles 3, 9 and 12 of the Universal Declaration of Human Rights as well as under the peremptory norms (*jus cogens*) of customary international law.

Directorate of General Investigation (Al-Mabahith al-Amma)

61. The Working Group wishes to express its grave concern about the pattern of arbitrary detention, torture and enforced disappearance perpetrated by the Ministry of the Interior's Directorate of General Investigation (Al-Mabahith al-Amma). The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of

[15] Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 8/Rev.1, available at www.ohchr.org/Documents/Publications/training8Rev1en.pdf. The principles contained in the Istanbul Protocol were endorsed by the Commission on Human Rights and the General Assembly; see Commission on Human Rights resolution 2000/43 and General Assembly resolution 55/89.

international law, as well as torture and enforced disappearance of persons, may constitute crimes against humanity.[16]

Naif Arab University for Security Sciences

62. The Working Group also expresses its grave concern at the allegation that Mr. Al Saqr was held in incommunicado detention and subjected to torture and ill-treatment at Naif Arab University for Security Sciences, an institution of higher education located in the capital city. The Government has failed to produce any documentary proof to refute this allegation or to reveal the location of Mr. Al Saqr's detention from July 2015 to May 2016.

63. The Working Group considers that it is impossible for such secret detention and torture to take place without the knowledge and acquiescence, if not the active assistance, of the faculty and administrative staff of Naif Arab University for Security Sciences. In the view of the Working Group, it is essential that the National Society for Human Rights or another independent body launch a thorough investigation into the matter.

64. The Working Group will refer the allegations of enforced disappearance, torture and ill-treatment of Mr. Al Saqr at Naif Arab University for Security Sciences, on suspicion of alleged terrorism connections, to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

Ratification of the International Covenant on Civil and Political Rights

65. The Working Group takes this opportunity to invite the Government to ratify the International Covenant on Civil and Political Rights as a sign of its commitment to defend the right to liberty of person and to eliminate instances of arbitrary deprivation of liberty. The Working Group refers to its statement in an annual report (see A/HRC/19/57, para. 69) indicating that arbitrary deprivation of liberty constitutes a violation of peremptory norms (*jus cogens*) of international law that are non-derogable, a position that echoes that of the Human Rights Committee in paragraph 11 of its general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency.[17]

Disposition

66. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Muhammed Al Saqr, being in contravention of articles 3, 6, 8, 9, 10, 11, 12 and 16 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

67. Consequent upon the opinion rendered, the Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situation of Mr. Al Saqr without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights.

68. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al Saqr immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

69. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the allegations of enforced disappearance, torture and ill-treatment of Mr. Al Saqr to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Enforced or Involuntary Disappearances and the

[16] See art. 7 (1) (e), (f) and (i) of the Rome Statute of the International Criminal Court. See also opinions No. 44/2016, para. 37; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

[17] See opinion No. 59/2016, para. 69.

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

Follow-up procedure

70. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Al Saqr has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Al Saqr;

(c) Whether an investigation has been conducted into the violation of Mr. Al Saqr's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Saudi Arabia with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

71. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

72. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

73. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[18]

[*Adopted on 24 November 2017*]

[18] See Human Rights Council resolution 33/30, paras. 3 and 7.

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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20–24 November 2017

Opinion No. 94/2017 concerning Yousuf bin Khamis bin Moosa al Balouchi (Oman)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 13 September 2017 the Working Group transmitted to the Government of Oman a communication concerning Yousuf bin Khamis bin Moosa al Balouchi (also known under his pen name Yousuf al Haj). The Government replied to the communication on 7 November 2017. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. Mr. Al Balouchi is an Omani journalist born in 1973. He is also known under the pen name of Yousuf al Haj. He is a former editor of the *Al-Zaman* newspaper. He usually resides in Al Musana'a, Al Batinah South Governate, Oman.

5. The source reports that, on 27 July 2016, *Al-Zaman* published an article entitled "Supreme bodies tie the hands of justice" concerning alleged manipulation and corruption in the Supreme Court of Oman regarding an inheritance case and implicating the Attorney General and the President of the Supreme Court in that regard. In his role as deputy editor-in-chief of *Al-Zaman*, Mr. Al Balouchi had interviewed the Vice-President of the Supreme Court for that article.

6. According to the source, on 9 August 2016, the Ministry of Information issued an order to halt the circulation and publication of *Al-Zaman*. On the same day, 9 August 2016, Mr. Al Balouchi was allegedly arrested at a barbershop by officials of the Omani internal security service, without any warrant and without being informed of the reasons for his arrest. On 11 August 2016, he contacted his family for the first time from the hospital where he had been transferred due to a serious asthma attack.

7. The source reports that Mr. Al Balouchi's first hearing was held on 15 August 2016, during which he was charged with, inter alia, undermining the status and the prestige of the State, publishing content that might be prejudicial to public security and contempt for the judiciary. Reportedly, he had been unable to communicate with his lawyer prior to the hearing. Mr. Al Balouchi was tried together with two of his colleagues.

8. The source reports that subsequent hearings were held on 22 and 29 August 2016, during which the judge refused to hear any defence witnesses. Although Mr. Al Balouchi was allowed access to his lawyer, their meetings prior to the hearing were not private and were always attended by officers of the Omani internal security service. After his second hearing, on 22 August 2016, Mr. Al Balouchi reportedly went on hunger strike in protest against his unfair trial and his conditions of detention.

9. Reportedly, during the fourth hearing, on 5 September 2016, Mr. Al Balouchi's defence counsel requested a change of judge, claiming that the current judge was not impartial given that he had mocked the defendant at previous hearings. The judge had allegedly affirmed that it was shameful that Mr. Al Balouchi was a journalist and had laughed when the defence counsel had stated that Mr. Al Balouchi was innocent. The hearing for a change of judge, set for 8 September 2016, was reportedly postponed twice. On 18 September 2016, the court rejected the request made by Mr. Al Balouchi's counsel.

10. The source informs that, on 26 September 2016, Mr. Al Balouchi was sentenced to three years' imprisonment and a fine of 3,000 Omani rials. Mr. Al Balouchi was allegedly detained in solitary confinement from the moment of his arrest to the time when the judgment was handed down in his regard. In the same case, the court of first instance in Muscat reportedly also ordered that *Al-Zaman* be shut down and banned.

11. According to the source, Mr. Al Balouchi appealed against his sentence and the corresponding hearings before the Court of Appeal began on 10 October 2016. According to the source, on 26 December 2016, the Court of Appeal upheld the conviction but reduced his sentence to one year's imprisonment. The Court of Appeal overturned the court of first instance's decision to shut down and ban *Al-Zaman*. The public prosecution service appealed against the Court of Appeal's decision to overturn the ban before the Supreme Court and the newspaper remains banned to this day.

12. On 29 March 2017, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of

human rights defenders sent a letter[1] to the Government of Oman expressing their concern at the arrest, detention and conviction of Mr. Al Balouchi.

13. The source claims that Mr. Al Balouchi's detention is arbitrary under categories II and III of the categories referred to by the Working Group.

Category II arbitrary detention — deprivation of liberty resulting from the exercise of freedom of expression

14. According to the allegations made by the source, Mr. Al Balouchi was arrested, prosecuted and detained are a direct result of his activity as a journalist and, therefore, of exercising his fundamental right to freedom of expression, enshrined in article 19 of the Universal Declaration of Human Rights. Mr. Al Balouchi's arrest was subsequent to the publication of an article in which allegations of corruption of judicial bodies and criticism of the integrity of the judiciary were made. Furthermore, the source states that the judgment against Mr. Al Balouchi was accompanied by a decision to ban the publication of *Al-Zaman*. The source, therefore, concludes that the judgment against Mr. Al Balouchi restricts his right to freedom of expression and is a direct result of the exercise of this right and therefore falls within category II of the categories applicable to the cases submitted to the Working Group.

Category III arbitrary detention — non-observance of international norms relating to the right to a fair trial

15. In addition, the source submits that Mr. Al Balouchi's arrest, detention and subsequent trial were marked by violations of his right to a fair trial. Mr. Al Balouchi was allegedly denied access to his lawyer before the start of his trial and was later only allowed to consult his lawyer in the presence of Omani internal security service officers. According to the source, during Mr. Al Balouchi's trial, the judge refused to listen to the defence witnesses and showed signs of bias and prejudice. As a consequence, the source argues that the international norms related to a fair trial were not respected and that such a violation renders Mr. Al Balouchi's detention arbitrary under category III of the categories applicable to the cases submitted to the Working Group.

Response from the Government

16. On 13 September 2017, the Working Group transmitted the source's allegations to the Government of Oman under its regular communication procedure, requesting the Government to provide detailed information by 13 November 2017 concerning the current situation of Mr. Al Balouchi and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying his continued detention and to provide details regarding the conformity of the relevant legal provisions and proceedings with international law, in particular the norms of international human rights law, which bind Oman. Moreover, the Working Group called upon the Government to ensure Mr. Al Balouchi's physical and mental integrity.

17. In its response dated 7 November 2017, the Government notes Mr. Al Balouchi's release and transmits the information from the public prosecution service set out below.

18. According to the Government, Mr. Al Balouchi was charged with violations of the law on the media and publications, the law on cybercrime and various provisions of the Penal Code. He was convicted of publishing an article attacking the Supreme Court that appeared on the front page of *Al-Zaman* newspaper on 7 and 9 August 2016. The article reported the arrest of *Al-Zaman*'s editor-in-chief, Ibrahim Al Maamari, in violation of an order issued by the Ministry of Information on 31 July 2016 banning the publication of any information related to the investigation of Mr. Al Maamari as well as to the legal case that was the subject of the *Al-Zaman* article entitled "Supreme bodies tie the hands of justice" that led to Mr. Al Maamari's arrest. The Government's submission also reiterated the

[1] Available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23047.

judgments concerning Mr. Al Balouchi handed down by the court of first instance, the Court of Appeal and the Supreme Court.

19. Regarding the submission concerning the violation of his right to freedom of expression enshrined in article 19 of the Universal Declaration of Human Rights, the Government stresses that the legal basis for Mr. Al Balouchi's arrest and detention complies with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Basic Statute of the State, the Penal Code and the law on cybercrime.

20. With regard to article 19 of the Universal Declaration of Human Rights, the Government states that the freedom to hold opinions is an absolute right that cannot be limited or interfered with, whereas the right to freedom of expression is subject to certain necessary limitations, including those specified in article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights). In Mr. Al Balouchi's case, his right to hold opinions was never in any doubt. However, Mr. Al Balouchi's expression of those opinions was harmful and unlawful and it was necessary to protect public order, as stipulated in domestic law, and to uphold the prestige of the judiciary, one of the pillars of the state, without prejudice to the right to criticize in accordance with the legal framework.

21. The Government notes that, in the light of the provisions of the European Convention on Human Rights and the Covenant, all freedoms and rights are subject to restrictions in the sense that their exercise must not be detrimental to the public interest, national security or public order, as well as to the rights and freedoms of others in a democratic society.

22. According to the Government, Mr. Al Balouchi was charged with and convicted of the publication of information prejudicial to public security. The offence for which Mr. Al Balouchi was convicted was unrelated to his professional activity as a journalist, or to his right to express his opinion concerning efforts to combat corruption in the judiciary. He was not arbitrarily detained, given that the charges and proceedings against him had a legal basis. Acts such as those committed by Mr. Haj were criminalized in order to maintain public order and to protect the rights and freedoms of others. Articles 12 (3), 18 (3), 19 (3) and 22 (2) of the Covenant make provision for the restrictions on the freedom of opinion and of expression applied in Mr. Al Balouchi's case. Therefore, article 29 of the Basic Statute of the State, which provides that the freedoms of opinion and of expression through speech, writings and other means are guaranteed within the limits of the law, is compatible with international standards.

23. In addition, according to the Government, the international principles concerning the conduct of journalists include established legal and ethical standards that members of the press should adhere to when exercising their profession and that are set out in international covenants, treaties and declarations, as well as in instruments adopted by the League of Arab States. In the light of the contents of those documents, media professionals have both a duty and a responsibility to:

(a) Carry out investigations and seek out and transmit the truth in an honest manner, without suppressing or falsifying information;

(b) Prioritize public opinion and public interests over those of media organizations or of individual journalists;

(c) Respect privacy and refrain from harming individuals and institutions through press publications and respect their wishes or the desire of their parents not to disclose their names;

(d) Refrain from creating prejudice and be precise and clear in the terms and expressions used in press coverage;

(e) Avoid defamation and slander of individuals, groups, institutions and bodies;

(f) Uphold the rule of law and support the judiciary in its efforts by refraining from publishing the proceedings of an ongoing trial that may disturb public order and undermine national security.

24. In response to the allegation that Mr. Haj's arrest, detention, trial proceedings and denial of access to his lawyer before the trial violated his right to a fair trial, the Government claimed that Mr. Haj was allowed to appoint and meet with two lawyers, Basma al Kiyoumi and Yacoub al Harthy. The request was submitted on 23 August 2016 and transmitted to the competent authority on 24 August 2016. The Committee to Protect Journalists was also allowed to meet Mr. Al Balouchi at the place of his detention. The Oman Human Rights Commission followed up on Mr. Al Balouchi's communication with his family and his lawyers. A member of the Commission met with Mr. Al Balouchi in prison to monitor his condition and Mr. Al Balouchi's lawyers were allowed to attend all hearings before the court of first instance and the Court of Appeal. They made no complaints concerning denial of access to their client.

25. The Government further explains that, in accordance with articles 10 and 11 of the Universal Declaration of Human Rights, Mr. Al Balouchi was tried before a judge with competence over all criminal cases within his jurisdiction, with all prescribed legal guarantees and no special court of special procedures was arraigned. He was given the opportunity to respond to the charges brought against him and to present his defence, assisted by his lawyers, as part of a public trial. The verdict and sentence were pronounced in public and Mr. Al Balouchi exercised his right to appeal to the Supreme Court. Mr. Al Balouchi was presumed innocent until proven guilty at a public trial, during which he enjoyed all the guarantees necessary for his defence.

26. The Government categorically denies the allegation that the judge refused to call witnesses for the defence and displayed signs of bias and prejudice, in violation of international fair trial norms.

27. As for Mr. Al Balouchi's treatment in detention and his current status, the Government reports that he was released on 23 October 2017 after serving his sentence. The Government asserts that Mr. Al Balouchi enjoyed all the rights stipulated in articles 9 and 10 of the Covenant. During his imprisonment, Mr. Al Balouchi received humane treatment and made no claims to the contrary during the investigation or trial. He served his sentence at Samail Central Prison, which runs reform and rehabilitation programmes in accordance with the law. He had medical visits to Al Nahdha Hospital on 18 September 2016 and a police hospital on 21 September 2016, and the corresponding medical reports were presented to the court during the trial. All prisoners are guaranteed access to health-care services. Doctors are permanently employed by the Directorate General of Prisons to evaluate the state of health of detainees and provide medical treatment.

28. The Government maintains that all relevant provisions of the Basic Statute of the State are in conformity with international norms and appeals to the Working Group to respect the principle of non-intervention in domestic matters, in particular with regard to the work of the judiciary.

Further comments from the source

29. The response from the Government was transmitted to the source for further comments on 7 November 2017. In its response of 15 November 2017, the source welcomes the response of the Government but highlights that most of the information provided either failed to address the allegations raised or refuted them outright without providing compelling evidence.

30. The source recalls that the Government has neglected to refute or address the allegation concerning his arrest without a warrant and without being informed of the reasons for his arrest. The Government also ignored the allegation that Mr. Al Balouchi had been held incommunicado during the first days of his detention.

31. The source refers to the apparent contradiction in the Government's claim that Mr. Al Balouchi's detention was not related to his activity as a journalist and its suggestion that he had been prosecuted for his failure to carry out those legal and ethical duties recognized under international instruments that must be adhered to in the conduct of media activities. The source recalls that the charges against Mr. Al Balouchi were clearly linked to his activity as a journalist and maintains that his detention resulted directly from his exercise of

the right to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights.

32. In response to the Government's claim that Mr. Al Balouchi's detention was a legitimate restriction under article 19 (3) of the Covenant, namely: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals, the source reaffirms that Mr. Al Balouchi was merely fulfilling his role as a journalist by disseminating information to the public. His article accused the President of the Supreme Court, Ishaq bin Ahmed al Busaidi, of corruption based on his interview with the Vice-President of the Supreme Court, Ali bin Salem al Nomani, and has clear relevance for Omani society as a whole. Therefore, Mr. Al Balouchi's exercise of his right to the freedom of expression did not constitute slander or a personal attack on the reputation of private individuals for the purpose of article 19 (3) of the Covenant.

33. The source cites paragraph 38 of the Human Rights Committee's general comment No. 34 (2014) on the freedoms of opinion and expression, which states that the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority, such as heads of State and government, are legitimately subject to criticism and political opposition.

34. In addition, the source disputes the claim by the Government that Mr. Al Balouchi's detention can be justified by the fact that it was in the public interest, as it upholds the prestige of the judiciary, which is one of the fundamental pillars of Omani society. The source maintains that exposing corruption in public institutions can hardly be defined as being contrary to the public interest, and that publications undermining public confidence in the judiciary authorities do not qualify as a threat to national security and stability.

35. The source also refers to paragraph 14 of the Human Rights Committee's general comment No. 27 (1999) on freedom of movement, which states that restrictive measures must: conform to the principle of proportionality; be appropriate to achieve their protective function; be the least intrusive instrument among those which might achieve the desired result; and be proportionate to the interest to be protected.

36. In the more specific context of the right to freedom of expression, paragraph 34 of the Human Rights Committee's general comment No. 34 (2014) on the freedoms of opinion and expression states that the principle of proportionality must also take account of the form of expression at issue, as well as the means of its dissemination. For instance, the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.

37. The source notes the Government's acknowledgement that Mr. Al Balouchi could only access his lawyers on 23 August 2016, i.e. two weeks after his arrest and after the beginning of his trial. His interrogation without the presence of his lawyers, the fact that he was not allowed to prepare his defence with them and the presence of agents of the Omani internal security service during his conversation with his lawyers infringed upon his right to confer with his lawyers in private.

38. According to the source, contrary to the Government's claim that Mr. Al Balouchi's right to access his lawyers was respected and that he received a visit from them as soon as he filed the corresponding request and thus never made any complaints in that regard before the court, Mr. Al Balouchi raised such violations of his rights before the court during the trial but the judge took no action in that regard.

39. The source underlines that the Government did not deny that Mr. Al Balouchi was held in prolonged solitary confinement but stated, in vague terms, that he was held in a place separate from that of convicted detainees. During his period of detention at Samail Central Prison, he was held in solitary confinement for over 40 days, treatment which amounts to torture or other cruel, inhuman or degrading treatment or punishment. The source therefore reiterates that the Government violated its obligation to treat him

humanely during his detention, as provided for by article 5 of the Universal Declaration of Human Rights.

40. The source also states that the public prosecution service failed to adequately respond to the allegation that, during Mr. Al Balouchi's trial, the judge both refused to hear the defence witnesses and displayed signs of bias and prejudice.

41. For the above-mentioned reasons, the source reaffirms that Mr. Al Balouchi's right to a fair and public hearing by an independent and impartial tribunal, as provided for under articles 10 and 11 of the Universal Declaration of Human Rights, has been violated.

42. On a further note, the Ministry of Information extended the closure of *Al-Zaman* on 8 January 2017 despite the Court of Appeal's 26 December 2016 decision quashing the court of first instance's prior ruling. Mr. Al Maamari, *Al-Zaman*'s editor-in-chief, whose sentence had been reduced to six months by the Court of Appeal, was released on 10 April 2017 after time served. The Supreme Court's decision of 5 October 2017, not only upheld the conviction of and sentence concerning Mr. Al Balouchi, who was released shortly after on 23 October 2017 after time served, but also ordered the permanent closure of *Al-Zaman*. The President of the Supreme Court, Ishaq bin Ahmed al Busaidi, whose alleged corrupt practices were the subject of Mr. Al Balouchi's reporting for *Al-Zaman*, did not recuse himself during the proceedings.

Discussion

43. The Working Group thanks the source and the Government for their engagement and for their submissions in relation to Mr. Al Balouchi's detention.

44. At the outset, the Working Group welcomes Mr. Al Balouchi's release on 23 October 2017. With his release, the Working Group has the option of filing the case or rendering an opinion in conformity with paragraph 17 (a) of its methods of work. In this particular case, the Working Group has decided to render the present opinion. In making this decision, the Working Group gives particular weight to the fact that, although Mr. Al Balouchi and his colleagues have all been released: (i) the circumstances in which they were detained were serious and warrant further attention,[2] as the individuals concerned were arrested, tried and convicted for their reporting on alleged corruption at the highest level of the judiciary; (ii) Mr. Al Balouchi was deprived of his liberty for over one year and two months; and (iii) Mr. Al Balouchi's criminal conviction, as upheld by the Supreme Court on 5 October 2017, may serve as the legal precedent for the arrest, detention and punishment or threat thereof to silence critics in the future. The Working Group further notes with concern that *Al-Zaman* remains closed because of the Ministry of Information's disregard for the Court of Appeal's decision of 26 December 2016 and the Supreme Court's decision of 5 October 2017.

45. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

46. The Working Group recalls that, where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.[3]

47. The Working Group wishes to reaffirm that any national law allowing deprivation of liberty should be made and implemented in compliance with the relevant international

[2] See opinion No. 50/2017, para. 53 (c).

[3] See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639, at para. 55, pp. 660–661; See also opinions No. 41/2013, para. 27; and No. 59/2016, para. 61.

provisions set forth in the Universal Declaration of Human Rights and other relevant international legal instruments. Consequently, even if the detention is in conformity with national legislation, the Working Group must assess whether such detention is also consistent with the relevant provisions of international human rights law.[4]

48. The Working Group considers that it is entitled to assess the proceedings of a court and the law itself to determine whether they meet international standards.[5] However, the Working Group reiterates that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of national law by the judiciary.[6]

49. The Working Group also reiterates that it applies a heightened standard of review in cases where the freedom of expression and opinion is restricted or where human rights defenders are involved.[7] Mr. Al Balouchi's role as a prominent journalist of a newspaper closed by the authorities for its critical reporting of alleged judicial corruption requires the Working Group to undertake this kind of strict scrutiny.

Category I

50. The Working Group will examine the relevant categories applicable to its consideration of this case, including category I.

51. The Working Group notes that the Government has neither refuted nor addressed the allegation that Mr. Al Balouchi was arrested without a warrant and without being informed of the reasons for his arrest and that he was held incommunicado during the first days of his detention until he suffered an asthma attack.

52. Article 9 of the Universal Declaration of Human Rights, which prohibits arbitrary arrest and detention, is a deeply entrenched human rights norm, reflected in both State practice and *opinio juris*.[8] Prohibition of arbitrary deprivation of liberty is part and parcel of customary law that bears an absolute character and is in fact a peremptory norm (*jus cogens*) of international law and therefore binding upon all States, irrespective of their treaty obligations.[9]

53. The Working Group underlines that the right to liberty and security of person, enshrined in article 3 of the Universal Declaration of Human Rights, applies to everyone and is further guaranteed through article 9 of the Universal Declaration of Human Rights, which prohibits arbitrary detention. As stated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court, deprivation of liberty is regarded as unlawful when it is not on such grounds and in accordance with procedures established by law.[10] In order to ascertain such legal basis, the authorities must present the charges when a person is arrested and detained, which did not happen in the present case.

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[4] See opinions No. 58/2017, para. 35; No. 20/2017, para. 37; No. 48/2016, para. 41; and No. 28/2015, para. 41.

[5] See opinions No. 58/2017, para. 36; and No. 33/2015, para. 80.

[6] See opinions No. 58/2017, para. 36; No. 59/2016, para. 60; No. 12/2007, para. 18; No. 40/2005, para. 22; and No. 10/2002, para. 18.

[7] See opinions No. 57/2017, para. 46; No. 41/2017, para. 95; No. 62/2012, para. 39; No. 54/2012, para. 29; and No. 64/2011, para. 20. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, in particular especially when there are claims of a pattern of harassment: see opinion No. 39/2012, para. 45. See also A/RES/53/144, annex, article 9 (3).

[8] See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639, at para. 65, p. 663; and ibid., Separate Opinion of Judge Cançado Trindade, at paras. 107–142, pp. 763–777. See also opinions Nos. 30/2011, para. 18; 31/2011, para. 16; 33/2011, para. 16; 41/2011, para. 15; 42/2011, para. 21; 43/2011, para. 16; 44/2011, para.18; 45/2011 para. 21; 22/2012, para. 44; 53/2012, para. 20; and 14/2014, para. 18.

[9] See A/HRC/22/44, paras. 42–51; see also A/HRC/30/37, para. 11; and opinions No. 63/2017, para. 51; No. 15/2011, para. 20; and No. 16/2011, para. 12; *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3, at para. 91, p. 42.

[10] See A/HRC/30/37, para. 12.

54. Furthermore, during the first days of his detention, the Working Group finds that Mr. Al Balouchi was placed outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.

55. The incommunicado detention also prevented Mr. Al Balouchi from being brought promptly before a judge or other officer authorized by law to exercise judicial power and from taking proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention. It also violated his right to be tried within a reasonable time or to be released. Mr. Al Balouchi's incommunicado detention therefore subjected him to arbitrary detention in violation of articles 3 and 9 of the Universal Declaration of Human Rights.

56. The Working Group also notes that the inability to have access to legal counsel prior to his first hearing would have undermined Mr. Al Balouchi's right to challenge the legality of his detention and his right to defence. Furthermore, the Committee against Torture has made it clear that incommunicado detention creates conditions that lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[11] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also consistently urged all States to declare incommunicado detention illegal.[12]

57. The Working Group therefore considers that the arrest and incommunicado detention of Mr. Al Balouchi from 9 August 2016 to 15 August 2016 by the Omani internal security service lack any legal basis, in violation of articles 3, 6 and 9 of the Universal Declaration of Human Rights and principles 2 and 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[13] The Working Group thus concludes that Mr. Al Balouchi's detention was arbitrary, falling under category I.

Category II

58. The Working Group acknowledges the reference of the Government to the provisions of the Covenant, as well as of the European Convention on Human Rights, in assessing the principle of necessity and proportionality concerning the right to freedom of expression in its submission, even though Oman is a party to neither of those instruments. The Working Group recognizes the willingness of the Government to adhere to these common standards for universal human rights, which constitute peremptory norms (*jus cogens*) of customary international law.

59. The Working Group recalls that the right to hold and express opinions, including opinions that are not in accordance with official government policy, is protected by article 19 of the Universal Declaration of Human Rights. The Government must respect, protect and uphold the right to freedom of opinion and expression, even where opinions have been expressed which are not to its liking, under the peremptory norms (*jus cogens*) of customary international law.

60. The Working Group notes that the Human Rights Committee, in paragraph 34 of its general comment No. 34 (2011) on the freedoms of opinion and expression, stated that restrictions on the freedom of expression must: not be overbroad; conform to the principle of proportionality; be appropriate to achieve their protective function; be the least intrusive instrument among those which might achieve their protective function; and be proportionate to the interest to be protected. It is worth noting that the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.

61. The Working Group considers that the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties and that all public figures, including those exercising the highest political

[11] See A/54/44, para. 182 (a).

[12] See A/54/426, para. 42; and A/HRC/13/39/Add.5, para. 156.

[13] See also articles 14 and 22 of the Arab Charter on Human Rights.

authority such as heads of State and government, are legitimately subject to criticism and political opposition. The Human Rights Committee, in paragraph 39 of its general comment No. 34 (2011) on the freedoms of opinion and expression, specifically expressed its concern regarding laws prohibiting disrespect for authority, the protection of the honour of public officials and criticism of institutions. In paragraph 38, the Committee stated that laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. In paragraph 42, the Committee stated that the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.

62. In the same vein, the Working Group notes that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression reiterated that the right to freedom of expression includes expression of views and opinions that offend, shock or disturb (see A/HRC/17/27, para. 37). In addition, Human Rights Council, in its resolution No. 12/16, paragraph 5 (p) (i), stated that restrictions on discussion of government policies and political debate are not consistent with article 19 (3) of the Covenant.

63. In the present case, the Working Group is convinced that the charges against Mr. Al Balouchi are clearly connected to his activities as a journalist and that his detention resulted directly from his exercise of the right to freedom of opinion and expression guaranteed by article 19 of the Universal Declaration of Human Rights. The Working Group also finds that Mr. Al Balouchi's arrest and detention and the closure of *Al-Zaman* for reporting on alleged corruption at the highest level of the judiciary was neither legitimate, necessary nor proportionate under the four-prong test.

64. It also appears that Mr. Al Balouchi and his two colleagues and co-defendants at the trial were detained owing to their work and positions at *Al-Zaman*. The same Supreme Court decision that upheld Mr. Al Balouchi's conviction also ordered the closure of *Al-Zaman*. Given that, under article 20 of the Universal Declaration of Human Rights, the term "association" usually refers to trade unions, non-governmental organizations and private businesses for the purposes of freedom of association, it is natural to include *Al-Zaman* in the present case.[14] For the reasons stated above, Mr. Al Balouchi's detention was neither necessary nor proportionate.

65. The Working Group therefore considers that Mr. Al Balouchi's deprivation of liberty is arbitrary, as it resulted from his exercise of the rights or freedoms guaranteed under articles 17, 19, 20 and 23 of the Universal Declaration of Human Rights, and falls within category II.[15]

Category III

66. The Working Group will now consider whether the violations of the right to a fair trial and due process suffered by Mr. Al Balouchi were grave enough to give his deprivation of liberty an arbitrary character, so that it falls within category III.

67. According to the information provided by the source, which the Government has not rebutted, Mr. Al Balouchi was arrested without a warrant and was neither promptly informed of the reasons for his arrest nor of any charges against him. Such arrest is arbitrary and in violation of article 9 of the Universal Declaration of Human Rights, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[16]

[14] "Religious societies, political parties, commercial undertakings and trade unions are as protected by art. 22 as cultural or human rights organizations, soccer clubs or association of stamp collectors." See M. Nowak, *UN Covenant on Civil and Political Rights: CCPR commentary* (Engel Publishers, 1993), p. 386.

[15] See also arts. 24, 32 and 34 of the Arab Charter on Human Rights.

[16] See opinions No. 63/2017, para. 66; No. 21/2017, para. 46; and No. 48/2016, para. 48.

68. The source alleges, and the Government has again not refuted, that Mr. Al Balouchi was subsequently held incommunicado by the Omani internal security service during the first days of his detention, which placed him outside the protection of the law. Furthermore, Mr. Al Balouchi's incommunicado detention entailed the denial of his right to notify and communicate with his family and lawyer in accordance with principles 15, 16, 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and his right to be brought promptly before a judge and to be tried within a reasonable time, as stipulated in principles 37 and 38 of the Body of Principles. The source alleged that his incommunicado detention resulted in the cumulative violation of articles 6, 8, 9, 10 and 12 of the Universal Declaration of Human Rights.

69. The Working Group also notes that, other than making vague references to Mr. Al Balouchi being held separately from convicted detainees and citing article 10 (2) of the Covenant, the Government failed to rebut the allegation that, following his incommunicado detention, Mr. Al Balouchi was held in solitary confinement during his period of pretrial detention. The Working Group notes that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that solitary confinement in excess of 15 days was "prolonged", at which point some of the harmful psychological effects of isolation could become irreversible.[17] Such prolonged solitary confinement may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture (see A/63/175, paras. 56 and 77). In this case, the Working Group considers that Mr. Al Balouchi's solitary confinement violated article 5 of the Universal Declaration of Human Rights, as well as article 8 of the Arab Charter on Human Rights.

70. Furthermore, the Working Group finds that the denial of adequate time and facilities to Mr. Al Balouchi for the preparation of his defence and private communication with his counsel constitute a violation of principles 17 (1) and 18 (1), (2) and (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and of principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

71. Nor was Mr. Al Balouchi promptly informed of the nature and cause of the charges against him, brought promptly before a judge, released pending the trial, allowed to take proceedings before a court to determine the lawfulness of his detention or permitted to obtain the attendance and examination of witnesses on his behalf, as stipulated in articles 9 and 14 of the Covenant, the provisions which collectively detail the minimum due process and fair trial guarantees protected under articles 9, 10 and 11 of the Universal Declaration of Human Rights.[18] The trial judge's refusal to hear defence witnesses also played a part in the violation of Mr. Al Balouchi's due process and fair trial rights.

72. For the reasons states above, the Working Group finds that the violations of the right to a fair trial and due process suffered by Mr. Al Balouchi were grave enough to give his deprivation of liberty an arbitrary character, so that it falls within category III.

Ratification of the International Covenant on Civil and Political Rights

73. The Working Group avails itself of this opportunity to invite the Government to ratify the International Covenant on Civil and Political Rights as a sign of its commitment to defend the liberty of person and to eliminate its arbitrary deprivation. The Government already made reference to the provisions of the Covenant in its submission and ratification would be a further step. The Working Group refers to its statement in its annual report (A/HRC/19/57, para. 69) indicating that arbitrary deprivations of liberty constitute a violation of peremptory norms (*jus cogens*) of international law that are non-derogable, a position that echoes that of the Human Rights Committee in paragraph 11 of its general

[17] See A/66/268, paras. 26 and 61. See also rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which likewise refers to solitary confinement for a time period in excess of 15 consecutive days as prolonged solitary confinement.

[18] See also principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and articles 12, 13, 14, 15 and 16 of the Arab Charter on Human Rights.

comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency.[19] The duty to comply with international human rights standards that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary detention, rests with all bodies and representatives of the State, all officials, including judges, prosecutors, police and security officers and prison officers with relevant responsibilities, and all other natural and legal persons.[20]

Disposition

74. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Yousuf bin Khamis bin Moosa al Balouchi, being in contravention of articles 3, 5, 6, 8, 9, 10, 11, 17, 19, 20 and 23 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.

75. The Working Group requests the Government of Oman to take the steps necessary to remedy the situation of Mr. Al Balouchi without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

76. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Al Balouchi an enforceable right to compensation and other reparations, in accordance with international law.

77. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

78. The Working Group encourages the Government to ratify the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.

Follow-up procedure

79. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Mr. Al Balouchi and his two fellow journalists;

(b) Whether an investigation has been conducted into the violation of Mr. Al Balouchi's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Oman with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

80. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

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[19] See opinion No. 59/2016, para. 69.

[20] See opinions Nos. 22/2014, para. 25; 48/2013, para. 14; 36/2013, paras. 34 and 36; 35/2013, paras. 35 and 37; 34/2013, para. 34; 9/2013, para. 40; 60/2012, para. 21; 50/2012, para. 27; and 47/2012; paras. 19 and 22.

81. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

82. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[21]

[*Adopted on 24 November 2017*]

[21] See Human Rights Council resolution 33/30, paras. 3 and 7.